IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2094 of 2007(Y)

OS.721/2006 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

T.R.SADANANDA BHAT,
KUDILIPARAMBIL HOUSE,
THAMMANAM P.O.
ERNAKULAM.

BY ADV. SRI.K.P.SREEKUMAR
SRI.R.GIREESH VARMA
SRI.P.M.SATHEESH

RESPONDENT:

A.K.PONNAMMA, AGED 69 YEARS,
W/O.K.P.MANILAL, RESIDING AT
XVI/585, T & R CROSS ROAD,
COCHIN 682 005.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.2094 OF 2007

DATED THIS THE 22nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is defendant and respondent plaintiff in O.S. 721/06 on the file of Sub Court, Ernakulam. In the suit, respondent filed I.A.8138/06, an application under Order XXXVIII Rule 5 of Code of Civil procedure for attachment of property of petitioner before judgment. Under Ext.P12 order, learned Sub Judge granted an order of conditional attachment and issued a notice to petitioner why security for Rs.2,00,000/-, the amount claimed in the plaint is not to be furnished. Case of petitioner is that the very suit is not maintainable as against petitioner as according to respondent the original liability was that of proprietory concern, which was allegedly taken over by a partnership firm and if that be so, the suit should be against the partnership firm and if the suit is to be treated as a suit against the firm, it is not maintainable. It is also contended that the plaint claim is clearly barred by time and petitioner has filed a written statement and objection to the application for attachment, and application for advancing to hear the very maintainability of the suit and even though the case was advanced, no order was passed and it

was now adjourned to 30th January, 2007 and as the suit itself is not maintainable, Ext.P6 order is to be quashed.

2. On hearing learned Counsel appearing for petitioner, it is not in the interest of justice to interfere with Ext.P12 order in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

3. Petitioner can raise all the contentions raised in this petition before Sub Court. It is submitted by learned Counsel appearing for petitioner that Sub Court is not taking up the matter and Sub Court may be directed to dispose I.A.8138/06 as well as the question of maintainability of the suit including the question of limitation on the next hearing ate.

Considering the facts and circumstances of the case, Sub Court, Ernakulam is directed to pass final order in I.A.8138/06 as expeditiously as possible. Learned Sub Judge has to consider the maintainability of the suit as well as the question whether the plaint claim is barred by limitation or not, when I.A. 8138/06 is considered.

M.SASIDHARAN NAMBIAR,JUDGE

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